

REMARKS

By this amendment, claims 1-4, 6-11, 13-18, and 20-33 are pending, in which claims 5, 12, and 19 have been previously canceled without prejudice or disclaimer, and no claims are withdrawn from consideration, currently amended, or newly presented. No new matter is introduced.

The final Office Action mailed September 5, 2008 rejected claims 15-18, 20, and 21 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, claims 22-24 and 27-29 under 35 U.S.C. § 102 (e) as anticipated by *Geissler et al.* (US 2003/0109988), claims 1-4, 6-11, 13-18, 20, 21, 25, 26, 30, and 31 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* (US 2003/0109988), in view of *Godfrey et al.* (US 2005/0071079), and claims 32 and 33 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* (US 2003/0109988), in view of *Godfrey et al.* (US 2005/0071079), and further in view of *Wandel* (US 6,034,623).

Applicants respectfully traverse the several rejections for the following reasons.

With regard to claims 15-18, 20, and 21, the Final Office Action continues to reject these claims as being directed to nonstatutory subject matter. The position recited in the Final Office Action relies on paragraphs [88]-[91] of the instant specification for a definition of “computer readable medium.”

Irrespective of any of the examples set forth in paragraphs [88]-[91] of the instant specification as to a “computer readable medium,” claims 15-18, 20, and 21 are **drawn specifically** to a “computer readable **storage** medium.” That is, the claims recite a **physical storage** medium that includes the instructions for performing the recited process. Such storage mediums may include, for example, hard drives, flash drives, floppy disks, compact disks, etc. That is, it includes any physical storage medium for storing the recited computer-readable instructions for performing the recited process. Such a physical storage medium is clearly a

machine or an article of manufacture, within the statutory classes of invention recited in 35 U.S.C. § 101.

To whatever extent the Examiner may be interpreting such a “computer readable storage medium” as also including nonstatutory subject matter within its purview, a position with which Applicants disagree, where a claim can be interpreted in both a patentable (statutory) manner and an unpatentable (nonstatutory) manner, it is both unfair and improper to interpret the claim as being unpatentable. The Examiner’s contorted interpretation of the claims in an alleged nonstatutory manner, when it should be apparent to the Examiner that the claims may also be interpreted in a statutory manner, is highly improper.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 15-18, 20, and 21 under 35 U.S.C. § 101.

The rejection of claims 22-24 and 27-29 under 35 U.S.C. § 102 (e) as anticipated by *Geissler et al.* is respectfully traversed because *Geissler et al.* does not, in fact, anticipate the subject matter of independent claims 22 and 27.

Independent claims 22 and 27 require the “configuration message” to configure “an **input/output (I/O) port** of the one telemetry device,” with the “**I/O port** being coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the **I/O port** according to the configuration message.” *Geissler et al.* fails to disclose any I/O ports, let alone having those I/O ports configured in accordance with a configuration message from a user input.

The Examiner points to paragraph [0045] of *Geissler et al.* as evidence of a user input relating to configuration of a telemetry device. This portion of *Geissler et al.* discloses that a “response signal” (configuration signal?) may be sent by a “qualified person” (a user) to a device and that a processing unit 260 in the device receives that response signal and may formulate a

control signal based on that response signal. The Examiner also points to paragraph [0055] of *Geissler et al.* as evidence of the claimed I/O port configuration. However, no I/O port is disclosed therein. Paragraph [0055] merely relates to the device controlling the “output unit” via the control signal. The remainder of the paragraph relates to a specific example of remote control of an output unit to release a drug to a person suffering an asthmatic attack. However, no **I/O port**, as claimed, configured by a user input, and coupled to one of the objects, is disclosed in *Geissler et al.*

To the extent that the Examiner intends the “output unit” of *Geissler et al.* to be the claimed “I/O port,” the “output unit” is defined by *Geissler et al.* at paragraphs [0049] and [0050]. Paragraph [0049] describes “a component for providing various forms of feedback or stimuli to a person, animal or object **via an output unit.**” It further states that “Output units can take any form to achieve the intended function,” and then, various examples of such output units are given: “syringes, electrodes, pumps, vials, injectors, drug and/or pharmaceutical or medicinal delivery mechanism or systems, tactile simulators, etc.” The “output unit may be integral with the Device or a separate component in communication with the ASP 200 and/or Device 100...” Paragraph [0050] gives an example of an “output unit” including “a microprocessor or logic for interpreting commands” or it “may be coupled to the microprocessor of the device.”

Moreover, the Examiner appears to ignore the “input” portion of the claimed “I/O port.”

Therefore, none of the examples of an output unit given by *Geissler et al.* constitutes or suggests an I/O port, much less the claimed I/O port of a telemetry device.

Since no I/O port is disclosed by *Geissler et al.*, the reference cannot anticipate claims 22 and 27 which specifically require an I/O port.

At page 2 of the Final Office Action, the Examiner now asserts that *Geissler et al.* “inherently” provides I/O ports (the Examiner does not indicate exactly what is being relied on in *Geissler et al.* for such I/O ports). However, even if one assumes, *arguendo*, that *Geissler et al.* inherently provides such I/O ports because the control signal must follow some connection or data path to control the output unit, the claimed subject matter is still not met. Claims 22 and 27 do not merely recite an “I/O port.” Rather, there is a special relationship between the I/O port of the telemetry device and the configuration message generated by the user input. That is, the I/O port of the telemetry device is “coupled to a corresponding one of the objects” and the telemetry device must **set the parameters of its I/O port according to the configuration message.**

Since *Geissler et al.* neither discloses nor discusses an I/O port of devices 100, it cannot be said to teach a setting of parameters of that I/O port in accordance with a user configuration message, even if it is assumed that an I/O port inherently exists. Surely, the Examiner is not also suggesting that the “inherent” I/O port is also “inherently” configured in accordance with a configuration message from a user. To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) citing *Continental Can Co. v. Monsanto Co.*, 948 F.3d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.* At 1269, 20 USPQ2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). At best, it can be said that, in *Geissler et al.*, the device 100 controls an output unit via the control signal derived by a user response signal, but there is no indication anywhere in *Geissler et al.* that any

I/O port of the device 100 is **configured in accordance with a configuration message from a user**, as required by the instant claims.

At page 2 of the Final Office Action, it is recited, “Geissler teaches wherein the telemetry device sets parameters relating to the IO port.” Clearly, this cannot be the case since the Examiner acknowledges that such an I/O port is not explicitly disclosed. If the I/O port is not explicitly disclosed, *Geissler et al.* cannot teach the telemetry device setting parameters relating to a phantom I/O port. In particular, the Final Office Action refers to lines 11-17 of paragraph [58] of *Geissler et al.*, indicating that the enabling and disabling of sensors by a remote station in response to a message by a user is equivalent to the setting of parameters related to an I/O port, as claimed. However, paragraph [58] relates to a user remotely powering individual devices up or down, i.e., turning devices “on” or “off.” The mere turning of a device “on” or “off” cannot be considered, “configuring an input/output (I/O) port of the one telemetry device **according to a protocol adapted for the two-way paging system**” (claims 22 and 27), as claimed. Even if a user’s request to turn a device on or off is broadly considered “configuring an input/output (I/O) port of a device,” there is no evidence in *Geissler et al.* that such a “configuration” is in accordance with “**a protocol adapted for the two-way paging system**,” as claimed.

Since *Geissler et al.* fails to teach all of the elements of claims 22 and 27, as well as the specifically claimed relationship between those elements, *Geissler et al.* cannot anticipate claims 22-24 and 27-29. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 22-24 and 27-29 under 35 U.S.C. § 102 (e).

Moreover, assuming, *arguendo*, that claims 22 and 27 can be considered to be anticipated by *Geissler et al.*, an assumption with which Applicants disagree, claims 23, 24, 28, and 29 are separately patentable because they include further claim features that are not taught by *Geissler et al.*

In particular, claims 23 and 28 depend, respectively, from claims 22 and 27, and further include the features of “receiving **another user input** to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry **device controlling one of the objects via the I/O port and status of the I/O port**” (claim 23) and “**another user input** is received instructing the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry **device controlling the corresponding one of the objects via the I/O port**” (claim 28).

Thus, even if one assumes, *arguendo*, that *Geissler et al.* discloses a first user input relating to the configuration of one of the telemetry devices, *Geissler et al.* clearly does not disclose **another user input** for instructing the system to transmit a control message to the telemetry device and that in response to this control message, controlling, by the telemetry device, one of the objects via the I/O port. In fact, the Examiner points to the same paragraph [0055] of *Geissler et al.* as a disclosure of both the “user input” of claims 22 and 27, and the “another user input” of claims 23 and 28. To the extent that this portion of *Geissler et al.* discloses a user input, it cannot be a disclosure of both “a user input” and “another user input,” as claimed. Claims 23 and 28 require two distinct user inputs, and *Geissler et al.* clearly does not disclose two such user inputs.

Moreover, for the reasons above, *Geissler et al.* does not disclose the I/O port as claimed in claims 22 and 27, but, more so, the reference clearly does not disclose a control message causing a telemetry device to control an object “via the I/O port **and status of the I/O port**,” as in claim 23. That is, claim 23 requires the control message generated in response to the “another user input” to cause the telemetry device to control **both** the object (via the I/O port) **and the status of the I/O port**. Even if the Examiner could arguably find, through inherency,

that *Geissler et al.* teaches the control of an object via an I/O port, and Applicants contend that any such finding is unreasonable, there is still no teaching, or even a suggestion, that any telemetry device in *Geissler et al.* controls the **status** of an I/O port.

In response, at pages 3-4 of the Final Office Action, the Examiner now refers to paragraph [0045], lines 1-7 and paragraph [0055], lines 9-12, of *Geissler et al.*, contending that the “another user input” in *Geissler et al.* is the response signal sent to a telemetry device by qualified medical personnel when it is determined that a medical condition of a patient is occurring. However, since the “user input,” according to the Examiner, is the input at paragraph [0058] that controls the ON/OFF status of the individual devices or sensors within the individual devices, and the “another user input,” according to the Examiner, is the response signal input by medical personnel at paragraph [0045] of *Geissler et al.*, if the first user input places the device in an OFF status, then the “another user input” is useless because the telemetry device is not in an enabled state to receive the response signal. Yet, claim 23, for example, recites, “receiving another user input to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the objects via the I/O port and status of the I/O port.” Thus, by the very nature of the claim language, the “another user input” must be able to cause a transmission of a control message to the telemetry device which, in response to the control message, must be capable of “controlling one of the objects via the I/O port and status of the I/O port.” In the Examiner’s interpretation of *Geissler et al.*, the first “user input” may have disabled the telemetry device. Therefore, the “another user input” would be incapable of “controlling one of the objects via the I/O port and status of the I/O port,” as required by the claim. Therefore, the Examiner’s analysis is, respectfully, flawed, with respect to instant claims 23 and 28.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 23, 24, 28, and 29 under 35 U.S.C. § 102 (e) for reasons in addition to the above reasons with regard to claims 22 and 27.

Applicant further respectfully traverses the rejections of claims 1-4, 6-11, 13-18, 20, 21, 25, 26, 30, and 31 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* in view of *Godfrey et al.* and claims 32 and 33 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* in view of *Godfrey et al.* and further in view of *Wandel*.

Independent claims 1, 8, and 15 all require a “programmable input/output (I/O) port of the one telemetry device” and there is no indication in either *Geissler et al.* or *Godfrey et al.* of any I/O port, much less a **programmable I/O port**. The Examiner purports to find such a teaching in *Geissler et al.* at paragraphs [0048], [0055], [0058], and [0022]. For the reasons above, paragraph [0055] clearly discloses no such “programmable I/O port.” Paragraph [0022] relates to a programmable “**clock**,” but neither mentions nor suggests a programmable I/O port. Paragraph [0048] recites “updateable firmware” in the Device 100, but the ability to update firmware in the device itself by configuring the device for updating by plugging it into a computer and running an update program, provides no teaching or suggestion of a programmable I/O port, especially a programmable I/O port that is configured by a configuration message, wherein the telemetry device sets parameters relating to the I/O port in accordance with a configuration message, as claimed. Paragraph [0058] relates to a power-saving feature to prolong the battery life of the Device 100, but there is no teaching or suggestion herein of any programmable I/O port, as claimed. This failure of the applied references to disclose or suggest the claimed “**programmable I/O port**” is sufficient grounds for the Examiner to withdraw the rejection of the claims under 35 U.S.C. § 103 and such withdrawal is respectfully requested.

To the extent the Examiner considers the control of the ON/OFF status of the devices in *Geissler et al.* (paragraph [0058]) to constitute a teaching of a “programmable I/O port,” Applicant notes that the claims, e.g., claim 1, recite, “receiving data corresponding to the I/O port of the one telemetry device **for managing a plurality of objects** corresponding to the telemetry devices.” If the telemetry device in *Geissler et al.* is powered down, i.e., in the OFF status, it cannot very well manage a plurality of objects, as is required of the telemetry device in the instant claims.

Moreover, *Godfrey et al.* does not provide for this deficiency of *Geissler et al.*, *Godfrey et al.* being applied for an alleged teaching of receiving a location data request for an Assisted-Global Positioning System (A-GPS). The Examiner finds that it would have been obvious to modify the teachings of *Geissler et al.* to include an A-GPS system “because doing so allows for better tracking of objects” (Final Office Action of September 5, 2008-page 10). To whatever extent that *Godfrey et al.* suggests an A-GPS system, Applicants do not deny that A-GPS systems, *per se*, were known. However, merely because A-GPS systems existed is no reason, within the meaning of 35 U.S.C. § 103, to find it obvious to include such a system within the system of *Geissler et al.* There must be some reason that stems from the prior art or the knowledge of skilled artisans that would have led the artisan to make such a modification to *Geissler et al.* The Examiner’s rationale of “better tracking of objects” fails to explain why the artisan viewing the system of *Geissler et al.* would have sought “better” (whatever the Examiner intends by that term) tracking of objects when the system of *Geissler et al.* appears to do just fine tracking objects. That is, there is nothing to suggest to artisans that any modification to the system of *Geissler et al.* would have been desirable, nor of why or how any such modification would have been made.

At page 4 of the Final Office Action, the Examiner contends that *Godfrey*, itself provides the motivation to combine through its teaching that the A-GPS system in *Godfrey* improves the tracking of a vehicle (the object) without some of the costs and disadvantages of the prior art, referring to paragraph [0012], lines 1-3 of *Godfrey*. However, paragraph [0012] of *Godfrey* merely indicates that any improvement to vehicle location is due to the unique Dedicated Short Range Communications (DSRC) of *Godfrey*. There is no indication that an A-GPS system, *per se*, provides for cost savings or advantages that would lead a skilled artisan to employ an A-GPS system in the system of *Geissler et al.*

Moreover, the instant claims do not merely require the use of an A-GPS system, *per se*, but, rather, the A-GPS system must be employed in the specific manner claimed and in accordance with the claimed interrelationship of elements. Accordingly, there would have been no reason, and the Examiner has not articulated any reasoning with some rational underpinnings, to modify *Geissler et al.* to provide an A-GPS system therein in the specific manner claimed.

Wandel fails to provide for the deficiencies of the primary references. Accordingly, the Examiner's rationale for making the combination is deficient and, therefore, no *prima facie* case of obviousness has been established. Thus, again, the Examiner is respectfully requested to withdraw the rejections of claims 1-4, 6-11, 13-18, 20, 21, 25, 26, and 30-33 under 35 U.S.C. § 103.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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